

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA**

DR. JEFFREY BROWNSON, : :

Plaintiff, : **CIVIL ACTION NO. 4:21-1993**

v. : **(JUDGE MANNION)**

PENNSYLVANIA STATE : :

UNIVERSITY, : :

Defendant.

ORDER

Pending before the court is Plaintiff's Motion for Leave to File a Supplemental Reply Brief in opposition to Defendant's Motion to Dismiss, (Doc. 22), and Plaintiff's Motion for Leave to File a First Amended Complaint, (Doc. 23), both filed on April 29, 2022. Defendant filed responses in opposition to both motions. (Docs. 26, 27). The original Complaint was filed July 5, 2021. After the parties' stipulation to transfer venue from the United States District Court for the Eastern District of Pennsylvania to this District was granted on November 22, 2021, Defendant filed a Motion to Dismiss on December 15, 2021. (Doc. 10). Briefing on the motion to dismiss concluded on February 3, 2022, when Defendant filed its reply brief. (Doc. 18).

The standard with respect to the Motion for Leave to File an Amended Complaint is found in Rule 15(a) of the Federal Rules of Civil Procedure which provides that leave to amend a pleading “shall be freely given when justice so requires.” “Denial of leave to amend can be based on undue delay, bad faith or dilatory motive on the part of the movant; repeated failure to cure deficiencies by amendments previously allowed; prejudice to the opposing party; and futility.” *Mullin v. Balicki*, 875 F.3d 140, 149 (3d Cir. 2017) (citing *Foman v. Davis*, 371 U.S. 178 (1962)). The grant or denial of leave to amend is within the sound discretion of the district court; however, failure to provide a reason for denying leave to amend is considered an abuse of that discretion. See *In re Burlington Coat Factory Sec. Litig.* 114 F.3d 1410, 1434 (3d Cir.1997) (citing *Foman* 371 U.S. at 182). When considering whether to grant leave to amend, a court may also consider “additional equities such as judicial economy/burden on the court and the prejudice denying leave to amend would cause to the plaintiff.” *Mullin*, 875 F.3d at 149–50 (footnotes and citations omitted). “[P]rejudice to the non-moving party is the touchstone for the denial of an amendment.” *Id.* at 150.

Here, Defendant argues the court should deny Plaintiff leave to file the amended complaint, alleging Plaintiff’s proposed amendments are futile and Plaintiff unduly delayed seeking amendment. (Doc. 27). Defendant

does not assert that granting leave to amend would in any way prejudice itself, nor does the court find any evidence of prejudice. The court will grant Plaintiff's motion to amend the complaint.

First, the court finds that Plaintiff should not be denied leave to amend based on undue delay. Plaintiff's new counsel filed a notice of appearance with the court on April 15, 2022, (Doc. 21), and filed the instant motion just fourteen (14) days later. Second, it is not clear that amending the complaint would be futile. Third, because an amended complaint supersedes the original complaint, the pending motion to dismiss is now moot and will be dismissed. Similarly, the motion to supplement the Plaintiff's brief in opposition to dismissal, (Doc. 22), will also be dismissed as moot. Finally, the Amended Complaint may have addressed alleged deficiencies in the original complaint and therefore remedied some or all of the original arguments raised in the motion dismiss as well.

In light of the foregoing, **IT IS HEREBY ORDERED THAT:**

- (1)** The Motion for Leave to File a First Amended Complaint, (Doc. 23), is **GRANTED**.
- (2)** The Clerk shall detach the amended complaint (Exhibit B, Doc. 23-2), pursuant to Local Rule 15.1(a), and docket it as the Amended Complaint.

**(3) Defendant's Motion to Dismiss, (Doc. 10), is DISMISSED
WITHOUT PREJUDICE.**

**(4) Plaintiff's Motion to File a Supplemental Reply Brief, (Doc.
22), is DISMISSED AS MOOT.**

s/ Malachy E. Mannion
MALACHY E. MANNION
United States District Judge

DATED: November 10, 2022

21-1993-05